IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 99 OF 2004
IN
CIVIL REVISION APPLICATION NO.78 OF 1996

B.M. Goenka .. Petitioner

Vs.

Velbai Nenshi (since deceased)
represented through
1A) Kantilal Khimji and anr. .. Respondents

And

1) Smt. Saraswati B. Goenka
and anr. .. Applicants

Mr. P.G. Karande for the applicants.

CORAM: B.H. MARLAPALLE, J.

Date : July 29, 2005.

P.C.:

1. Heard the learned counsel for the applicants. The Civil Revision Application No.78 of 1996 arose from the order dated 4-12-1995 passed by the Small Causes Court at Mumbai in Interim Notice No.4216 of 1994. The said notice was taken out for dismissal of the suit on the ground that the suit property had

become the property of MHADA and, therefore, in view of the provisions of Section 5 of the MHADA Act of 1976, the suit could not be entertained by the Small Causes Court i.e. RAD Suit No.6563 of 1979. The trial court rejected the contentions and the CRA challenging the said order was admitted by this Court on 2-2-1996. There was interim order in terms of prayer clause (b) and consequently the proceedings in the suit came to be stayed.

2. The petitioner died and on 2-12-2004 this court was informed to that effect. Time was sought to bring the LRs on record.

3. This Civil Application has been filed to bring the LRs of the petitioner on record i.e. his wife and son. As per the Registry's note the application is beyond time by three years and 156 days. The respondents have filed affidavit in reply opposing this application. The applicants contend that applicant no.1 is very old and applicant no.2 had suffered set-back in his business and under that tension he could not take appropriate steps to file

this application. The respondents in their reply affidavit have contended that the reasons stated in support of condonation of delay are not bonafide and, in fact, the said application is an abuse of the process of law. There is no dispute that applicant no.2 has taken steps for being impleaded as necessary party to the proceedings pending before the apex court. Nothing stopped him from applying to this court in time for being added as the applicant-petitioner along with his mother in the pending CRA. The reasons given by the applicants for the delay cannot be held to be satisfactory so as to condone such a long delay of three years and 156 days.

4. Even otherwise it is clear from the order impugned in this CRA that the trial of the suit could be continued only after the decision in the pending appeals before the Supreme Court is rendered. The trial court also noted that so long as certified copy of the judgment of the Supreme Court was not produced before it, it could not dismiss the suit as not tenable, more so when the very same GR dated 15/12/1992 by which the present petitioners claim that

the suit property was transferred to MHADA, is under challenge before the apex court. It is thus clear that the abatement of the CRA itself could not be a reason for the trial court to proceed with the suit. In the present circumstances the trial of the suit can proceed only after the final decision in the pending appeals is rendered by the Supreme Court.

5. Application is rejected.

(B.H. Marlapalle,J.)